IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 19TH MARCH 2007 / 28TH PHALGUNA 1928

WP(C).No. 32287 of 2006(R)

PETITIONER:

LEELAMMA, W/O.JOSEPH,
KALLUVETTAM KUZHIYIL, ADIMALI,
DEVIKULAM, IDUKKI DISTRICT, REP. BY HER POWER OF
ATTORNEY - SRI.SHOJAN K.R., S/O.RAPPAI K.K.,
KOKKADAU HOSUE, MANNAMPITTA PL.O., VATTANATHARA,
THRISSUR DISTRICT.

BY ADV. SRI.V.B.UNNIRAJ
SMT.S.SREEJA

RESPONDENTS:

1. MUNNAR GRAMA PANCHAYATH,
REP. BY ITS SECRETARY.

2. DISTRICT COLLECTOR,
IDUKKI.

3. TAHSILDAR,
DEVIKULAM.

4. SPECIAL TAHSILDAR (L.A.),
DEVIKULAM.

5. VILLAGE OFFICER,
K.D.H.VILLAGE, DEVIKULAM.

ADDL.6. THE EXPERT COMMITTEE, CIVIL STATION PAINAVU , IDUKKI
(ADDL. R6IS IMPLEADED AS PER COMMONORDER DATED 18-12-2006)

BY ADV. SMT.AYSHA YOUSEFF, SC, MUNNAR G.PANCHAY
SMT.MOLLY JACOB, SC, MUNNAR G.PANCHAYAT
GOVERNMENT PLEADER SRI.P.K.BABU
ADDL.ADVOCATE GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, ALONG WITH WPC NO. 32292 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No. 32287/2006 **APPENDIX**

Ext.P1: True copy of the order passed by the 4th Respondent in LA No.5/1983

Ext.P2: True copy of the Patta dated 8-2-1983

Ext.P3: True copy of the Thandaper accounts

Ext.P4: True copy of the tax receipt dated 20-3-2003

Ext.P5: True copy of the possession certificate

Ext.P6: True copy of the sketch

Ext.P7: True copy of the order passed by the land Board

Ext.P8: True copy of the letter dated 16-07-2002

Ext.P9: True copy of the building permit granted to Sri.Samudra Pandian

Ext.P10: True copy of the interim order in W.P(C) No. 100100/06

Ext.P11: True copy of the building permit issued to Sri.Bibin Jose

Ext.P12: True copy of the interim order in W.P(C) No. 12863/2006

Ext.P13: True copy of the application dated 28-10-2006

Ext.P14: True copy of the building plan

Ext.P15: True copy of the receipt issued by the 1st respondent

Ext.P16: True copy of the location Map

Ext.P17: True copy of the order from the 1st respondent

Ext.P18: True copy of the notice dated 23-01-2007

Ext.P19: true copy of letter

Respondent' s Exhibits

Ext,R1(a) True extract of relevant pages of the Report of the Expert Committee constituted by the Government

Ext.R3(b) : A true copy of the relevant pages of the day book dated 14-7-1998

Ext.R3(c): A true copy of the relevant pages of the day book dated 14-3-2002

Ext.R3(d) : A true copy of the relevant pages of the day book dated 11-1-2002

Annexure -I : Extract of Thandaper Register TP-115 from the year 1995-96 till date

Annexure-II : Extract of Thandaper Register TP-15 from 1980-81 to 1994-95

//True copy//

es

PIUS C. KURIAKOSE, J.

W.P.(C) Nos. 32287 and 32292 OF 2006

Dated this the ..... day of March, 2007

JUDGMENT

Since the grounds raised in these two Writ Petitions and the reliefs sought for therein are identical, they are being considered together. The respondents are the Munnar Panchayat-1st respondent, District Collector, Idukki – 2nd respondent, Tahsildar, Devikulam-3rd respondent, Special Tahsildar(LA), Devikulam-4th respondent, Village Officer, KDH Village-5th respondent and the Expert Committee for unearthing bogus pattayams, Civil Station, Pynavu, Idukki-additional 6th respondent. The petitioner in WPC No. 32292 of 2006 claims that he is having absolute ownership and possession of 33 cents of land in Survey No. 62/13c of KDH village in Devikulam Taluk by the virtue of Ext.P2 Pattayam, in that case which was validly issued to him. According to him, he has been in possession of the property covered by Ext.P2 since 1983 and the revenue authorities have effected mutation in his favour and issued possession certificate also. He claims that the property was in possession of the Government even prior to the advent of KDH Act and therefore the KDH Act is not at all applicable to the land covered by Et.P2 and the land in question could have been assigned by the Government under the provisions of Land Assignment Act.

2. In WP(C) No.32287 of 2006 the case is that the petitioner has been similarly in possession of 31½ cents of land in survey No. 62/13c of KDH village in Devikulam Taluk by virtue of Ext.P2 Pattayam. She also claims that mutation has been effected by the revenue officials in her name and that she has been issued with possession certificate. She also claims that the property was in the custody of the Government even prior to the advent of KDH Act and therefore KDH Act is not all applicable to the land covered by the Pattayam in her favour. Both petitioners submit that their applications to the Panchayat for building permits for the construction of buildings on the property covered by the Pattayams in their favour are not favourably considered by the Panchayat. They allege that the Panchayat is adopting double standards since building permits have already been issued to other persons in the Panchayat holding properties in the adjacent area.

3. The prayers in the Writ Petition are the following:

i. Issue a declaration that the petitioners are entitled to make constructions in the property obtained by them under the respective Pattayams and also to dispose of the properties either in full or in parts.

ii. Issue a writ of mandamus commanding the 1st respondent-Panchayat to issue building permit and thereafter approving the building plan forthwith.

ii. Issue appropriate orders to respondents 2 to 4 to accept the basic tax in respect of the properties covered by the two pattayams.

4. On WP(C) No.32287 of 2006, the earlier instituted Writ Petition coming up for admission, notice was taken by the Standing Counsel for the Panchayat on behalf of the 1st respondent and by the Government Pleader on behalf of respondents 2 to 5. Since I was informed that certain interim reliefs had been granted to the petitioner in WP(C) No.31505 of 2006 who according to the petitioner was similarly circumstanced, I directed the Government Pleader to seek instructions as to whether WP(C) No.32287 of 2006 is identical to WP(C) No.31505 of 2006. On 18.12.06 I impleaded the additional 6th respondent and after hearing the Senior Counsel who appeared for the petitioners, the Government Pleader and the counsel for the Panchayat passed an interim order directing the Panchayat to issue building permit to the petitioners for carrying out constructions on the basis of the plans submitted by them provisionally and subject to further orders to be passed by this Court subject to the condition that both the petitioners submit an undertaking in the form of an affidavit before this Court agreeing to demolish whatever constructions they make on the strength of the provisional permit obtained as above. I clarified that if the result of the Writ Petition goes against them, they will not be eligible for any equity. Under the same order I directed the additional 6th respondent-Expert Committee to file a report as to the stage of the enquiries which are being conducted them

and also as to whether the Pattayams issued to the petitioners under the provisions of the Land Assignment Act, have been found so far to be tainted any manner.

5. On 6.2.2007 a counter affidavit was filed by the 3rd respondent-Tahsildar. ON 9.2.07 the Additional Advocate General Sri.Venganoor Chandrasekharan Nair entering appearance on behalf of respondents 2 to 6 submitted that he is making available the entire report of the Expert Committee (additional 6th respondent) for perusal by this Court. Later as directed by this Court on 12.2.07, an additional counter affidavit was also filed by the 1st respondent-District Collector annexing Ext.R1(a) which are copies of the relevant pages(page Nos.7 to 41 and 206) of the report of the additional 6th respondent-Committee. The petitioner filed reply affidavit to the counter affidavits submitted by the respondents.

6. Heard Sri. M.C. Sen, Senior counsel on behalf of the petitioners, the Additional Advocate General, Sri.Venganoor Chandrasekharan Nair, for respondents 2 to 6 and Smt.Aisha Yusuf, Standing Counsel for the Munnar Panchayat. Mr.Sen, Senior Counsel would make submissions on the basis of the pleadings raised by the petitioners. Inviting my attention to the various documents placed on record, the senior counsel would endavour to analyse Annexure R1(a) and submit that the findings in Annexure R1(a)

so far as they relate to the petitioners in these two cases cannot be sustained. The Additional Advocate General making submissions on the basis of the counter affidavits particularly the additional counter affidavit and Ext.R1(a) and the original of the Expert Committee report which he made available for my perusal would submit that an exhaustive report has been submitted by the Committee which was appointed by the Government to conduct an inquiry into the issue of bogus Pattas in large numbers for grabbing Government properties in KDH village in Devikulam Taluk. The Additional Advocate General submitted that the high level committee, with the land board Secretary as its convenor and the Chief Conservator of Forest Protection, the Director of Survey and Land Records and the District Collector, Idukki as its members. It was requested by the Government to unearth the bogus Pattas in KDH Village, and that in the preliminary assessment itself the Committee found that apart from bogus Pattas, bogus or unauthorised possession certificates were also made use of for grabbing Government land. Forgery was seen committed in Thandaper account registers of KDH village for accommodating bogus Pattas and encroachments. It was seen that forgery was committed in the No.2 register for recording details of assignment of land. Under these circumstances with the objective of detecting fraud and forgery, a physical verification of the

land holdings in the entire village, examination of the files and registers connected with the assignment of land available in Taluk office, Devikulam, the Thandaper account registers, Pokkuvaravu registers and all related files of the KDH Village became inevitable and accordingly special cells were constituted and large number of staff were deployed for field verfication and ultimately it has been reported as per the full text of Ext.R1(a) that there was as many as 15 categories of irregularities in the matter of issuance of Pattas in KDH village. The 7th category was "Bogus Pattas" with forged entry in Taluk records but having no land in possession. The additional Advocate General submitted that as part of the field verification the Sub Collector had issued notification in dailies informing the public to produce documents, if any, relating to land in their possession before the enquiry team for verification. Only one person came forward and he produced three Pattas and it was seen that there is no land under the actual possession of the Patta holders based on the Pattas. It was thus found that the Pattas were bogus. The Pattas relied on by the petitioners in both these cases came under the above 7th category. The Additional Advocate General invited my attention to the two additional documents, Annexures 1 and 2, produced against a memo dt.19.2.07. Annexure 1 is extract of Thandaper Register showing Thandaper No.115 during the period from 1995-96 till date and

Annexure 2 is copy of the extract of the Thandaper register showing Thandaper No.115 for the period from 1881 up to 1994-95. Thandaper No.115 is the Thandaper claimed by the petitioner in WP(C) No.32287 of 2006 and Annexures 1 to 3 were produced in that case. A similar memo has been filed in WP(C) No.32292 of 2006 and Annexure 1 is extract of the Thandaper register relating to Thandaper No.119(Thandaper claimed by Sri.Yousuf, petitioner in WP(C) No.32292 of 2006) for the period from 1995-96 till date. Annexure 2 is extract of the Thandaper register relating to Thandaper No.119 for the period from 1883 to 1994-95. This will show that Thandaper No.119 became blank only during 1993 due to transfer of registry by virtue of PV No.2/93 dt.10.08.93.

7. The Additional Advocate General invited my attention to the additional counter affidavit filed in WP(C) No.32292 of 2006 and to the additional documents Exts.R3(a), R3(b), R3(c) and R3(d) produced along with the same.

8. Ordinarily in the light of the documents placed on record by the petitioners one would have been inclined to think that those documents do make out a prima facie case of the ownership and possession claimed by the petitioners over the respective properties. But perusal of the various materials placed on record by the respondents is sufficient to say that the

above prima facie case stands abundantly rebutted by the respondents. The Additional Advocate General also placed before me for perusal the original of the Thandaper account registers relating to Annexures 1 and 2 and I have perused them.

9. On appreciating the submissions of the Additional Advocate General the following aspects will be prima facie noticed regarding the claim in WP(C) No.32292 of 2006. As per Ext.R1(b) the relevant pages of statement of payment maintained in KDH Village will show that on 7.2.99 Rs.12/- has been paid as basic tax for the year 1998-99 as per receipt No.46/19. But there is no corresponding entry in Ext.R3(a) which is the collection day book. On the contrary what is stated is that on that particular day there was no collection at all. In Ext.R1(b) it will be seen that there is a payment of Rs.12/- on 4.1.2000 as per receipt No.35/47. But in Ext.R3(b) there is no corresponding entry on that day but instead it is stated that there was no collection on that date. In Ext.R1(b) it is stated that on 6.2.02 there is payment of Rs.24/- as tax as per receipt No.43/46. But there are no corresponding entries in Ext.R3(c). Instead it is stated that on 6.2.02 there was no collection. It is also to be noted that as per Ext.R3(d) there was payment of Rs.6/- as per receipt.

10. Moreover as per Annexure R3(d) receipt No. 123/46 dated 16-1-2002 there was a payment of Rs. 6/-. Thus it is clear that the payment has shown in Annexure R2(b) the entry dated 6-2-2002 regarding Rs. 24/- was not a genuine payment. The payment interestingly is in the name of B.Karunakaran , Geethalayam , while in W.P.(C) 32287 of 2006 it will be seen that in Annexure R2(b) it is stated that there is a payment of Rs. 12/- on 14-7-1998 as per receipt No. 23/17. But interestingly some entries are seen in R3 (b) on 14-7-1998 and the name of the party is stated as Durai raj. In Annexure R2 (b) it is stated that there is payment of Rs. 36/- on 14-3-2002 as per receipt No. 123/38. But there are no corresponding entries in R3(c) on 14-3-2002 Payment is seen made by several persons. But the name of the petitioner significantly is absent. Actual payment was made by M/s Kannan Devan Employees Co-operative Society as per receipt No. 123/38 dated 11-1-2002.

11. Thus my survey of the documents placed on record by the respondents and the aspects highlighted in his submission of the Addl. Advocate General will show that the case of the respondents that the pattas relied on by the petitioners are not genuine and that the finding of the expert committee that those pattas are bogus pattas and that the writ petitioner never had possession of the properties covered by those pattas

cannot be brushed aside. I refrain from making any definite findings on the issue. I will only say that a cloud has been cast on the title and possession claimed by the writ petitioners on the strength of the pattas, the possession certificates and the basic tax receipts produced by them, by the records produced and the circumstances brought out by the Addl.Accountant General This court therefore will not be justified in exercising the extraordinary discretionary jurisdiction under Article 226 for granting reliefs to the petitioners.

12. The interim orders issued in the petitioner's favour will stand vacated. The writ petition will stand dismissed Mr. M.C. Sen senior counsel would place before me a copy of Govt. Order (Rt) No.754/07/Revenue dated 17-02-2007. It is provided therein that further enquiries will be conducted regarding the genuineness or otherwise of the Pattas relating to properties in K.D.H. village and the Govt. will cancel the bogus pattas and takes steps for reassuming land covered by bogus pattas. According to the learned senior counsel in the light of order dated 17-2-2007 the Government has to be directed to take fresh decision regarding the genuineness or otherwise of the pattas relied on by the petitioner. I do not think that the G.O dated 17-02-2007 be of much assistance to the petitioner . However I make it clear that the dismissal of

this writ petitions will not stand in the way of the petitioners establishing the rights claimed by over the properties in question in a competent Civil Court. The Civil Court will notice that observations have been made in this judgment for the purpose of these two writ petitions alone.

Dismissed as above .No costs.

PIUS.C.KURIAKOSE .JUDGE

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